

Media Regulation – Balancing European Harmonization and National Sovereignty

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- Media Regulation
 - Media?
 - Regulation?
- European Harmonization
 - EU as supranational construction and the single market
 - Europe beyond the EU?
- National Sovereignty
 - Relevance of allocation of competences
 - Sovereignty in more than one dimension
- 1989 - 2024 - ...
 - Remember where we came from
 - Recall where we stand – and ideally look to where we might be heading...

And why Media Regulation is still... ... and increasingly relevant

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- Content (especially audiovisual) is an important element
 - for the opinion-forming of the people in (democratic) States
 - of the internal market in the EU, both in cultural and economic terms
- But: content may be illegal or harmful
 - in itself or in the way it is disseminated
 - AV content esp. has an intensive effect
- Technological advancement
 - possibilities of digitalisation and availability of technology has diversified distribution channels and distributors
 - reception possibilities are almost unlimited, which is also the case for vulnerable groups of recipients
- Status quo threatens fundamental rights and values in the EU
 - Member States have committed themselves to these and must actively safeguard them
- Recipients expect a safe, free and pluralistic media environment
 - they do not care (specifically) about distribution channels or distributors in that context
 - however: regulation does...



CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION	
2012/C 326/02	
PREAMBLE	
TITLE I	DIGNITY
TITLE II	FREEDOMS
TITLE III	EQUALITY
TITLE IV	SOLIDARITY

Article 3
(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

The theory of allocation of powers between EU and Member States

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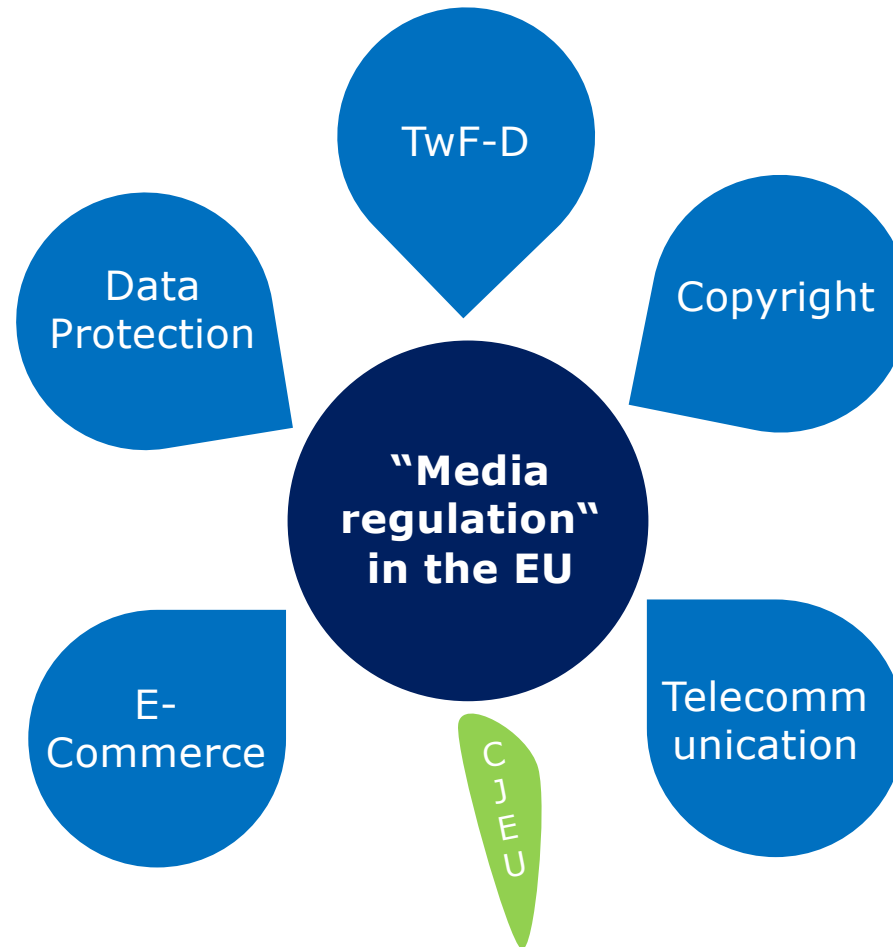
- Not a theoretical lecture, but:
 - Principle of limited allocation of powers
 - → what are Media?
 - Principle of subsidiarity
 - → relevance of Media for local, regional, national context (and beyond)
 - Principle of proportionality
 - → what is the appropriate form to regulate? (Directive \leftrightarrow Regulation)

- Significance (?) of a trend towards 'Act-ification' of EU law (with relevance for our field)
 - Objective/Aim to be differentiated from competence/legal basis
 - → all a question of a functioning (digital) single market?

- Beyond substantive harmonization of rules it is a 'REMS-Question'
 - → Regulatory *Enforcement* in Multi-Level Systems

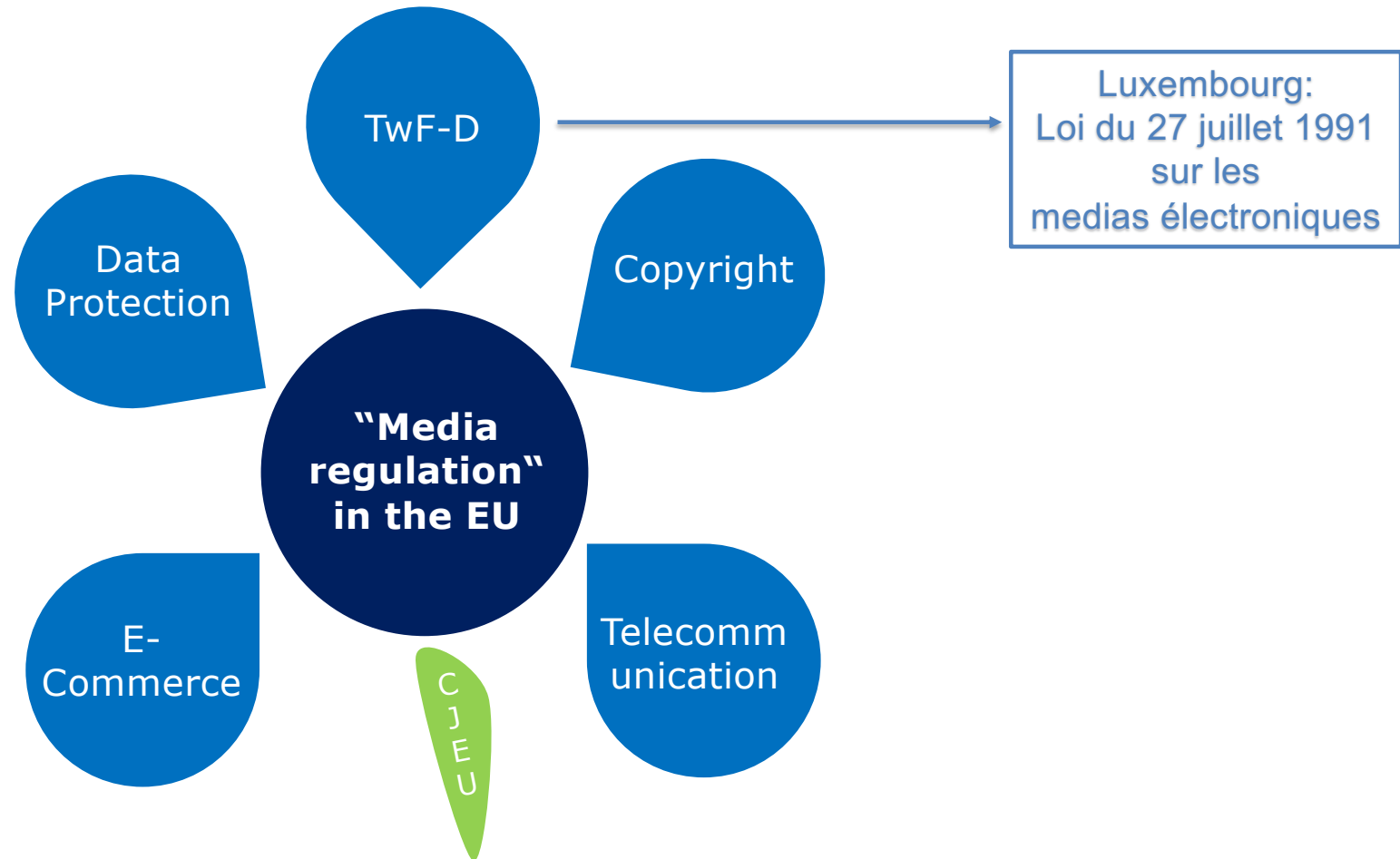
And what it looks like in practice: first phase (1989 – approx 2000)

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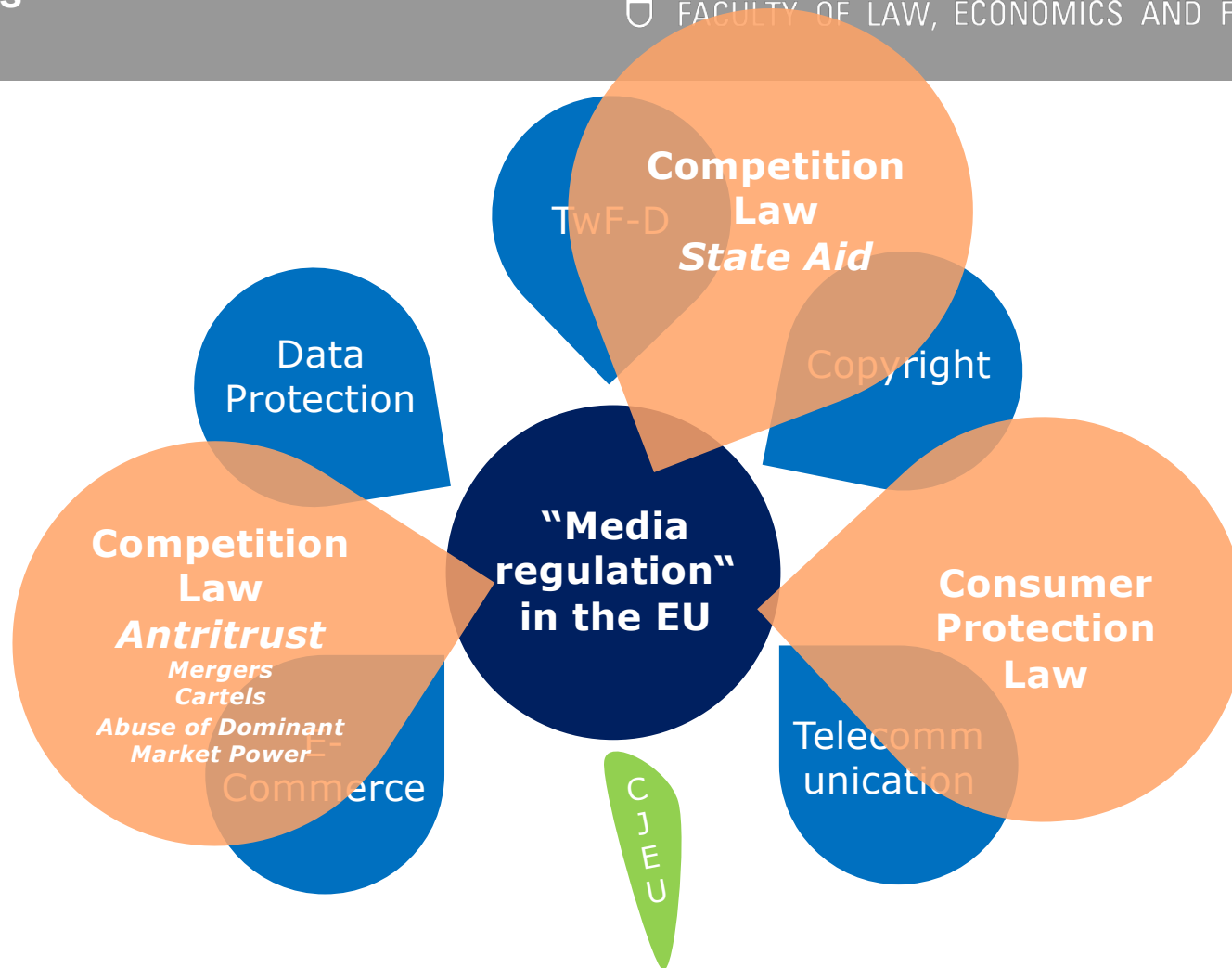
And what it looks like in practice: first phase

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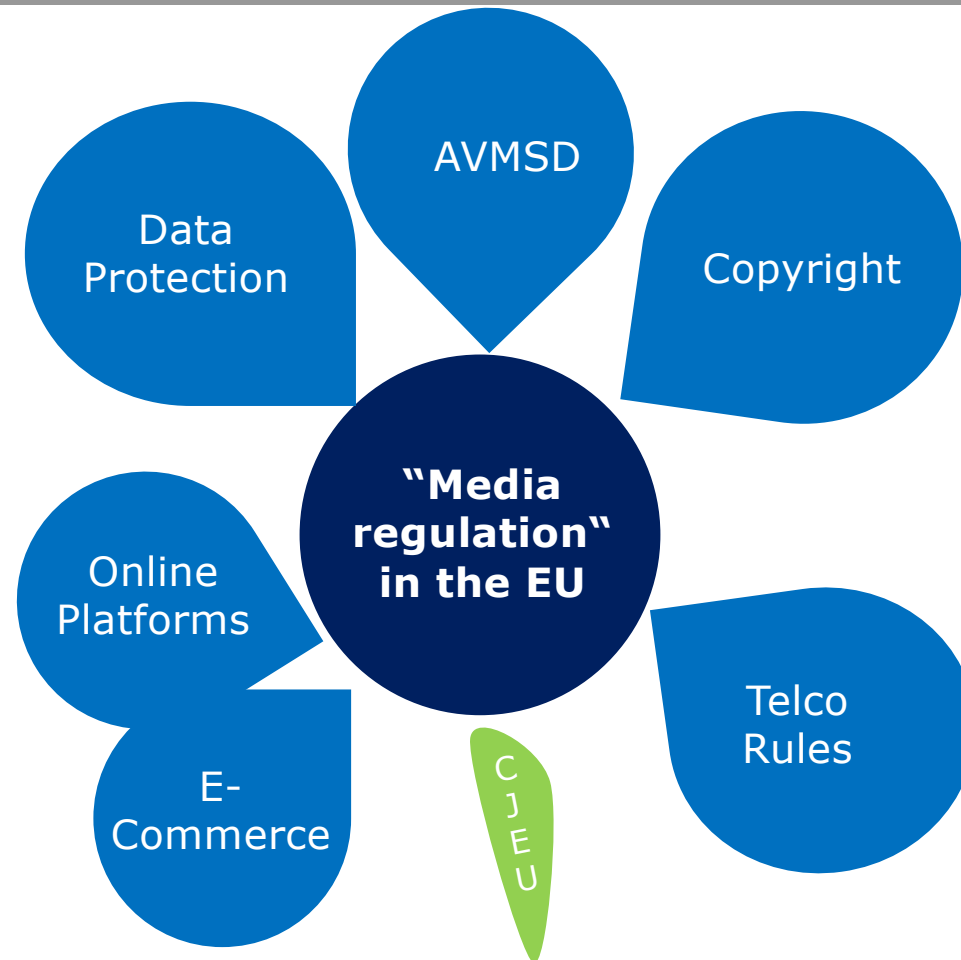
And what it looks like in practice: first phase plus

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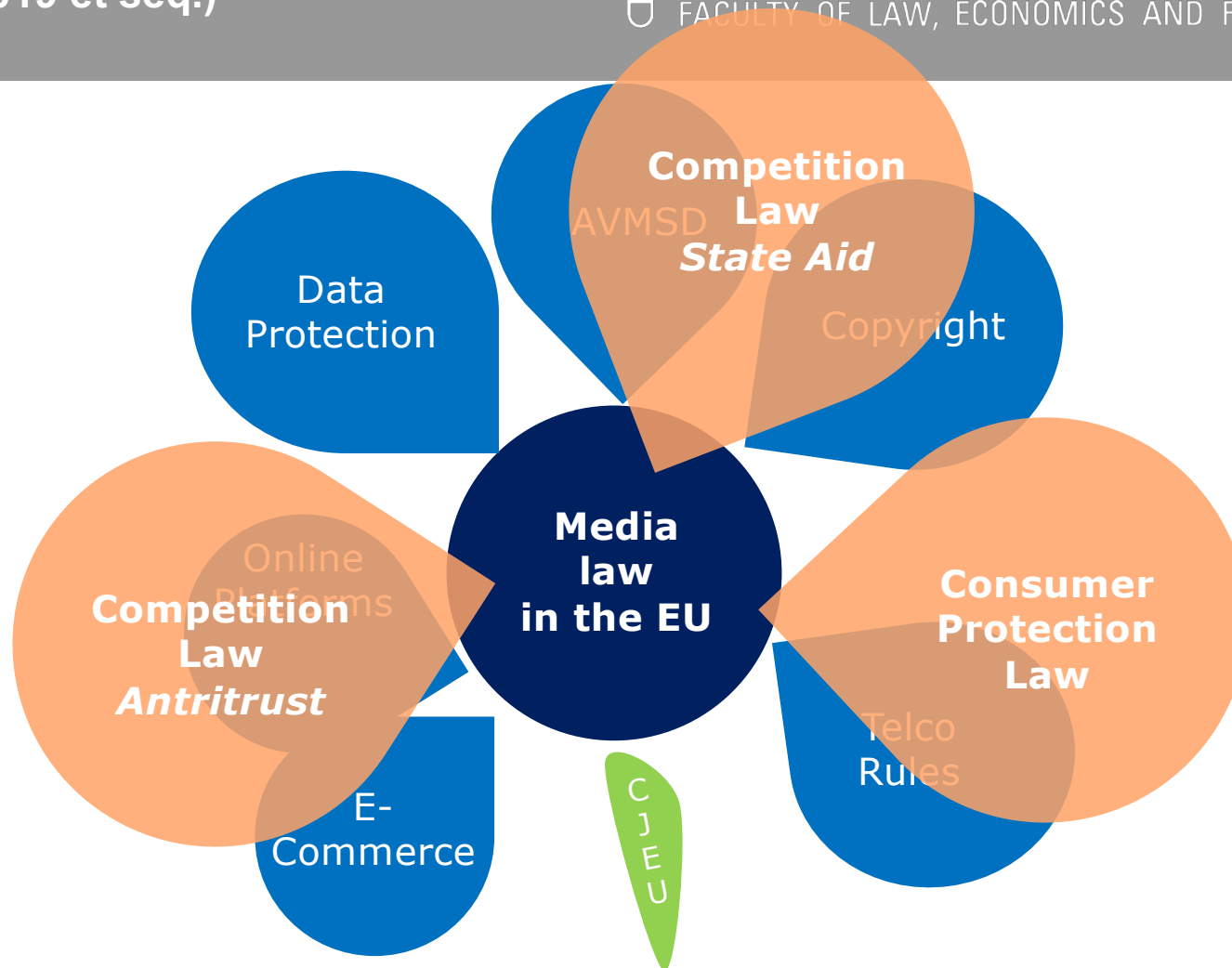


And what it looks like in practice:
second phase (approx. 2007 – 2018)

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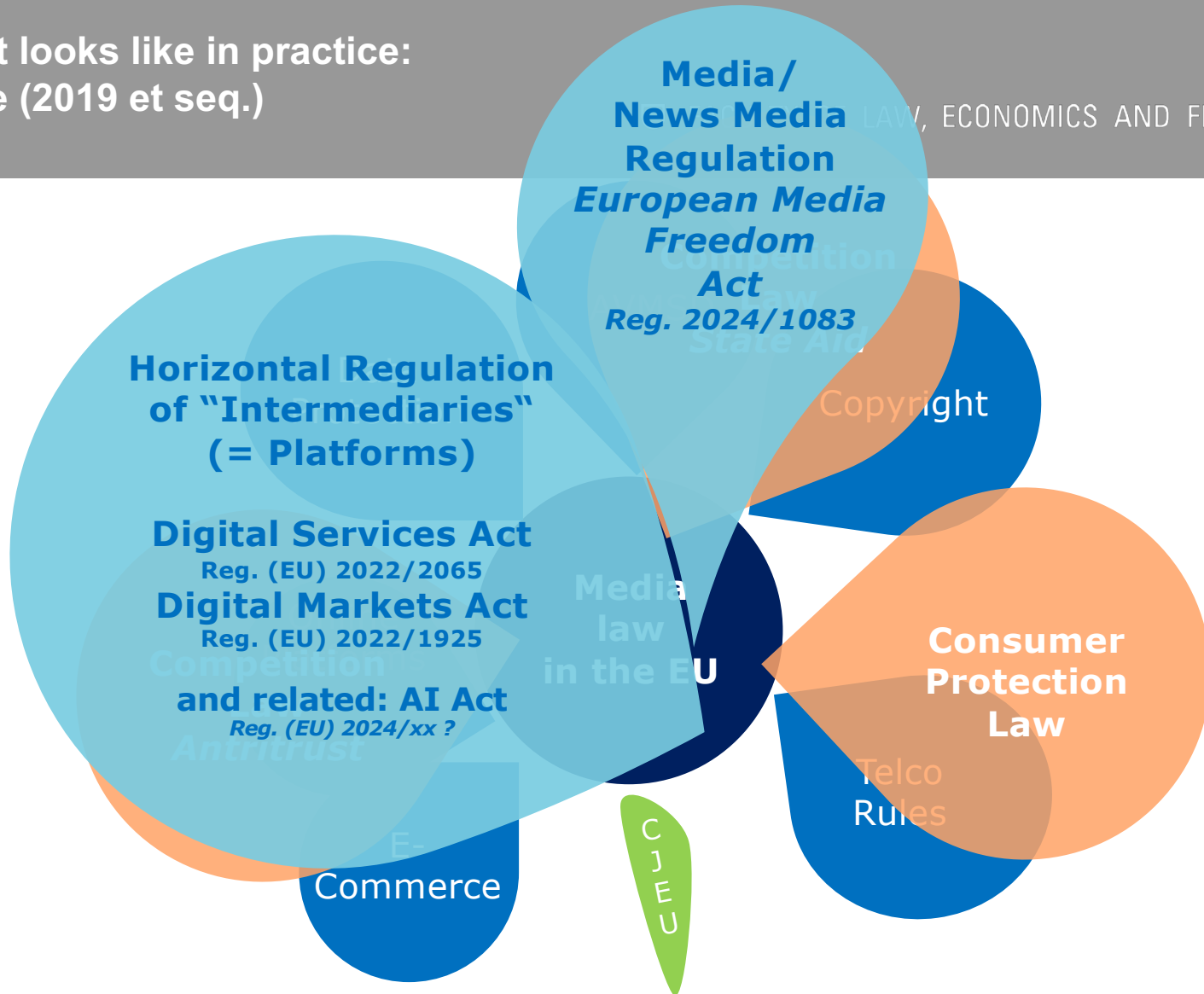


And what it looks like in practice:
third phase (2019 et seq.)



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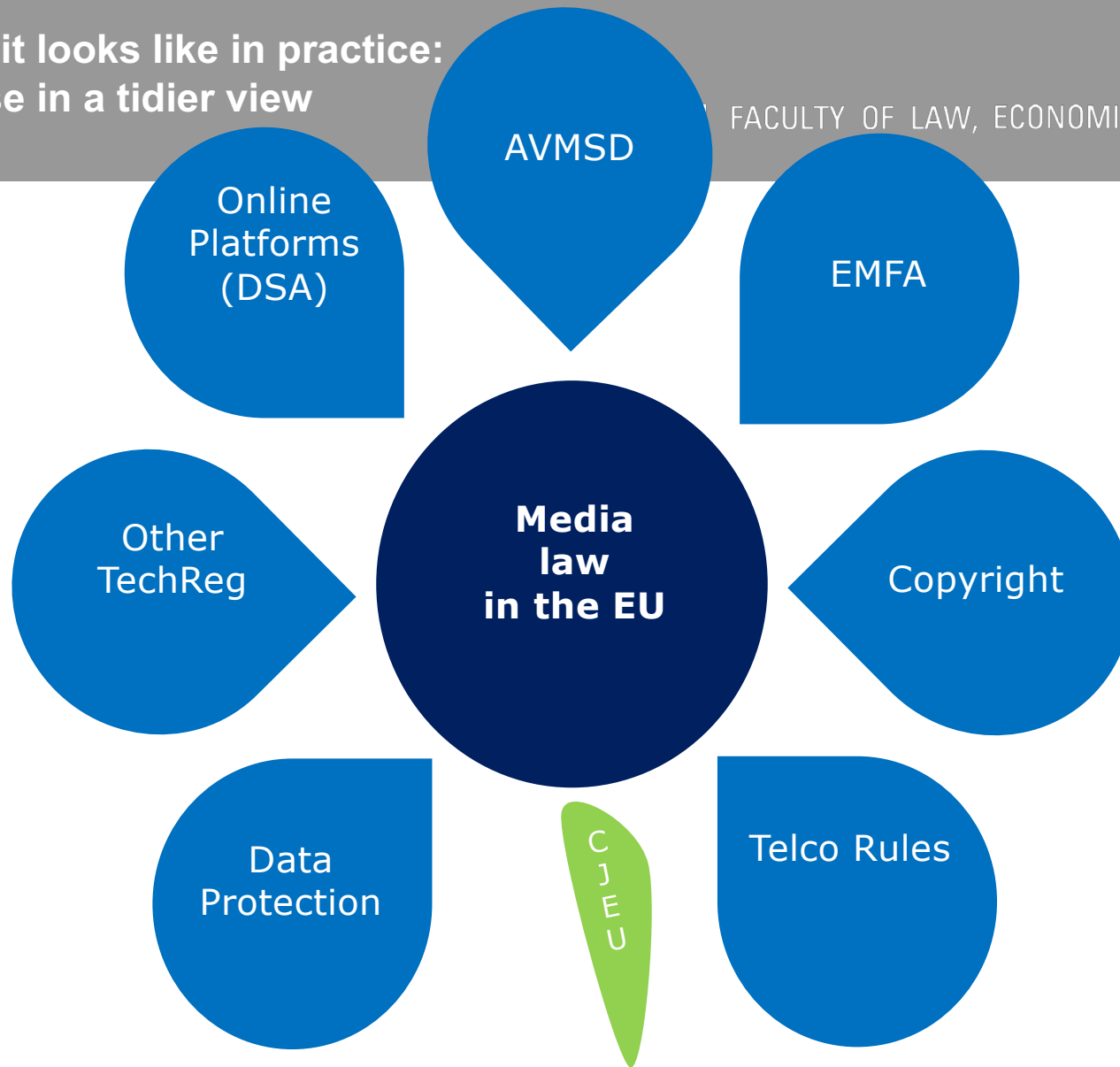
And what it looks like in practice: third phase in a tidier view

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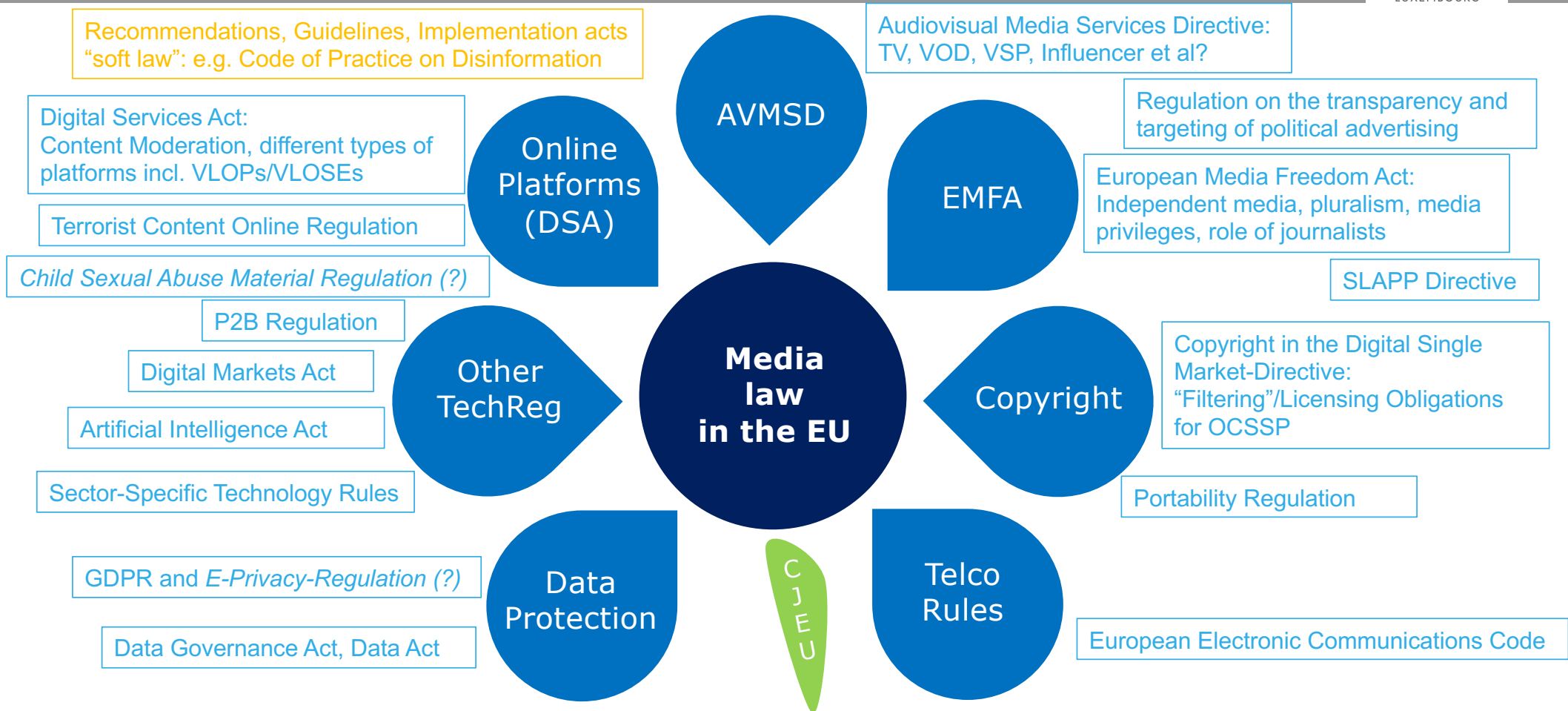


And what it looks like in practice:
third phase in a tidier view

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And what it looks like in practice: third phase in a more detailed view



What space is left?

- Important distinction
 - Substantive Rules Harmonization
 - Check also within Regulations for gaps to be filled
 - Procedural/Institutional Structures for Enforcement / Oversight
 - Role of Member States
 - Increased Role of EU (European Commission)
 - Need for cooperation internally (cross-authorities) and internationally (cross-border)
 - Coordination in EU bodies (wide variety of institutional setups)

- Guiding principles for filling the space in both dimensions
 - Value-based
 - Fundamental rights, such as human dignity, protection of minors, privacy in balance with freedom of expression
 - Forceful protection of functioning democracies
 - Consideration of relevance of 'local' dimension
 - Support framework for reliable media (relevant media / content pluralism)
 - Media literacy / education
 - Institutional aspect

- Presence of Member State in negotiations on EU level
 - namely: future AVMSD with country of origin/marketplace question
 - and: shorter life-span of laws in the tech field

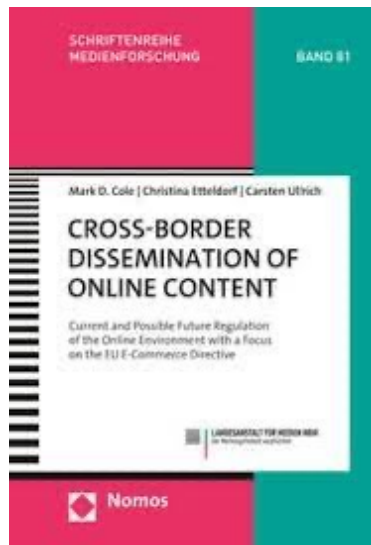
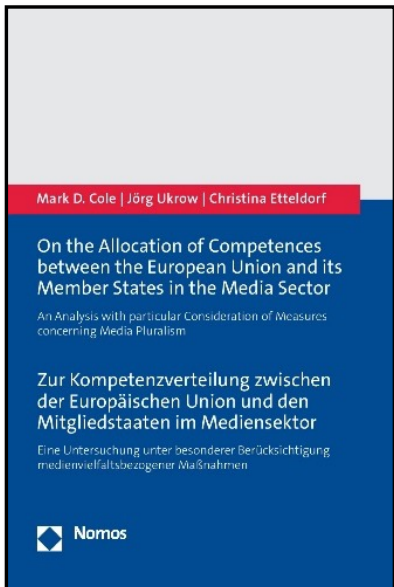
- Potentially role of Council of Europe as standard-setting organisation
 - for example: [Recommendation CM/Rec \(2022\)11](#) of the Committee of Ministers to member States on principles for media and communication governance

And some further reading... ... and viewing

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2021



2020



2021



2023



2023



2023

<https://emr-sb.de/vod-der-emfa-ist-da-beginn-eins-neuen-zeitalters-der-eu-medienregulierung/>